



# ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: July 7, 2009

ITEM NUMBER: IX-1

**SUBJECT: ORDINANCE TO ESTABLISH A TEMPORARY MORATORIUM ON NEW MASSAGE ESTABLISHMENTS AND NEW MASSAGE PRACTITIONER PERMITS**

**DATE: JUNE 23, 2009**

**FROM: POLICE DEPARTMENT/FIELD OPERATIONS DIVISION**

**PRESENTATION BY: CLAY EPPERSON, LIEUTENANT (714) 754-5603**

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## **RECOMMENDED ACTION:**

Approve an urgency ordinance of the City of Costa Mesa adopting a 45-day moratorium on the issuance of any new, or expansion of any existing, massage establishment permits.

Direct staff to identify opportunities to increase revenue received from the processing of massage establishments and massage practitioners to offset the cost of regulating massage establishments and practitioners.

Direct staff to review current massage regulations to better manage the presence of massage business in the City of Costa Mesa and to address the impact of new California State laws governing massage practitioners.

## **BACKGROUND:**

There are 54 massage establishments currently in the City of Costa Mesa, not including massage services provided under the care of a chiropractor. Some of the massage establishments are completely legitimate and provide a desired service. History has shown, however, that some massage establishments are illegitimate fronts for prostitution. The City of Costa Mesa has adopted rigorous municipal codes to help regulate the massage establishments and practitioners with the goal of keeping illegitimate massage establishments out of the city. Despite the rigorous municipal codes, the City of Costa Mesa has a substantially higher concentration of massage establishments than neighboring cities.

The CMPD Special Enforcement Detail (SED) provides directed enforcement against career criminals, significant crime problems, and narcotics enforcement. It is also tasked with the responsibility of providing vice enforcement in the City. To accomplish this, SED must target on-street prostitution, outcall prostitution, and prostitution operated out of business fronts. Because of the increasing number of massage establishments, the regulation, inspection, and undercover verification and enforcement of massage establishments has grown into an extremely large task that could consume all of SED's

available time. Currently, a Community Services Specialist (CSS) is dedicated full time to managing the processing of applications for massage establishments and practitioners. The workload for this position continues to increase.

In 2006, the City received 239 applications for massage related permits. In 2007, 262 applications were received, and in 2008, 305 applications. There were 176 applications by massage practitioners to change their license to allow them to work at other massage establishments in the City. The high number of practitioners who seek licensing to work at multiple massage establishments appears to be a function of the relatively high number of massage establishments in the City. The municipal code does not allow CMPD to charge a fee for the additional licensing to offset the substantial processing costs.

While some massage establishments are beneficial and completely legitimate, others have been problematic and have engaged in criminal enterprise. Some of the problems include:

- Ongoing prostitution under the guise of a massage business;
- Flagrant violation of the municipal code governing massage establishments;
- Citizen complaints regarding the concentration of massage establishments in specific areas;
- Citizen complaints regarding the proximity of massage establishments to residential areas and the impact on traffic, parking, noise and quality of life;
- The organized sale and utilization of fraudulent transcripts of massage training for purposes of obtaining a license;
- An organized, for profit, illegitimate group to assist massage applicants with the massage test;
- Falsified massage establishment and practitioner applications.

In September 2009, Section 4600 of the Business and Professions Code (Senate Bill 731) will become law and create a voluntary certification for the massage therapy profession. This bill will allow a State Board to license practitioners. However, regarding the massage establishments, it *"provides that duly authorized officials of the city have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements."*

At this point, it is not entirely clear how the new regulations instituted under section 4600 of the Business & Professions Code will impact the City of Costa Mesa. Despite the fact that Costa Mesa Municipal Code, (Article 22) regarding massage establishments and practitioners was revised ten years ago, with the September effective date section 4600, the City's Code is in need of updating. In addition, massage practitioners may not opt to go by way of the voluntary state certification. In this case, the City of Costa Mesa would still be involved with certification. The City would therefore need to update Article 22 due to recently discovered loopholes in the private postsecondary education regulation, deception, and/or trickery on the part of applicants as well as the translator(s) used in the testing process.

The proposed urgency interim ordinance will prohibit the establishment of any massage establishment and/or the expansion of existing massage establishments for a 45-day period. The moratorium will need to be extended as needed until such time as staff is able to develop and bring forward appropriate code amendments, and for those amendments to take effect. Without adoption of this ordinance, properties in the City of

Costa Mesa could receive entitlements on massage establishments, expand existing establishments and unqualified persons could obtain permits to operate as massage practitioners.

The moratorium will provide the City with a window to evaluate the impact of section 4600 on the operation of massage establishments in Costa Mesa.

### **ANALYSIS:**

While the City of Costa Mesa has embarked upon a course of strict regulation of massage establishments, surrounding cities have been more aggressive in limiting the presence of massage establishment in their respective cities. As a result, Costa Mesa currently has significantly more massage establishments than surrounding Cities.

The approach to limit the number of massage establishments taken by other Cities varies widely. Santa Ana has maintained a moratorium on massage establishments for over a year and a half by renewing a similar moratorium. Huntington Beach has limited the number of massage establishments to ten. Irvine has used zoning to confine massage establishments to non-residential areas, but they are reporting an increase in license applications. Newport Beach has used a regulatory process similar to Costa Mesa but they have allowed the decision makers to use more discretion in allowing or disallowing massage permits. As an example, Costa Mesa essentially requires a prior conviction for misconduct to deny a permit while Newport's code allows denial based on a totality of circumstances that suggest the business would not be operated in the best interests of the City and the public.

The massage establishments reflected in this chart are stand-alone massage businesses. They do not reflect massage practitioners associated with hotels, spas, or chiropractors. A review of internet advertisements for massage services can provide a more qualitative perspective of the problem in Costa Mesa. Massage service providers will advertise under "therapeutic services" and some advertise under "adult services." Some businesses hint or imply that sexual services may be procured. Others clearly suggest that sexual services are available. Many prostitutes working in the region openly advertise in the adult services section along with some of the massage providers. A review of these advertisements demonstrates that Costa Mesa appears over-represented in the offering of legitimate and illegitimate massage services. In comparison, there are virtually no advertisements for Newport Beach which has many massage practitioners but few stand alone massage establishments.

Some provisions of the Costa Mesa Municipal Code, specifically Article 22 (which deals with massage establishments and practitioners) need review, study, and possible revision in order to respond to the recently enacted legislation, as well as to address concerns relating to the current impacts of massage establishments and the potential of a large influx of new massage establishments in our City. Specifically, the Municipal Code sections in Article 22 or elsewhere in the code that may be in need of revision relate to zoning issues, such as the proximity to residential neighborhoods, the number of massage establishments in the City of Costa Mesa, practitioner permitting and establishment permitting and regulation.

The 45-day interim ordinance period would provide a window of opportunity for City staff to begin to analyze and review regulations in Article 22 of the Costa Mesa Municipal Code

and to study the impact of section 4600 on them. This will assist in the preparation of changes in the ordinance for massage establishments and practitioners.

**ALTERNATIVES CONSIDERED:**

None.

**FISCAL REVIEW:**


No immediate fiscal impact due to the moratorium. It is anticipated that there could be a reduction in employee hours dedicated to the processing of permits and for hearings on denied permits.

**LEGAL REVIEW:**

Legal has prepared the Urgency Ordinance for Council's consideration and action. The urgency ordinance must receive a 4/5<sup>th</sup> vote to take effect, and would take effect immediately if adopted.

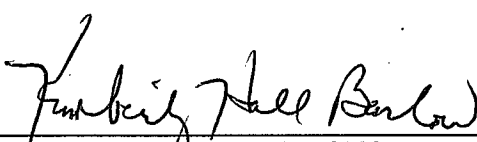
**CONCLUSION:**

The City Municipal Codes governing Massage establishments are onerous for legitimate massage establishments and practitioners, but they do not appear to be a deterrent to illegitimate businesses. Police Department staff recommends that City Council adopt an urgency ordinance of the City of Costa Mesa Municipal Code establishing a 45-day moratorium on the issuance of any new or expansion of any existing massage establishment permits, or the issuance of any new (non-replacement) massage practitioner permits. Given the substantial and growing number of massage establishments in the City of Costa Mesa and the changes in State law governing massage licensing, current regulations must be reviewed and updated for improved effectiveness.

  
CLAY G. EPPERSON  
Lieutenant, Special Operations Group

  
CHRISTOPHER SHAWKEY  
Chief of Police

  
MARC R. PUCKETT  
Director of Finance

  
KIMBERLY HALL BARLOW  
City Attorney

DISTRIBUTION: City Manager  
City Attorney  
Finance Director  
City Clerk

**ORDINANCE NO. 09-**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF COSTA MESA, CALIFORNIA  
IMPOSING A 45-DAY CITY-WIDE MORATORIUM ON  
THE APPROVAL OF ANY BUSINESS LICENSE, USE  
PERMIT, OR ANY APPLICABLE APPLICATION  
RELATED TO MASSAGE ESTABLISHMENTS AND/OR  
MASSAGE PRACTITIONERS**

WHEREAS, the City of Costa Mesa General Plan was adopted in January 2002, and it embodies the community's long-range vision of providing for the balanced development of a diverse mix of commercial goods and services and employment opportunities in consideration of the needs of the business and residential segments of the community; and

WHEREAS, a high concentration of massage establishments exists in specific areas of the City; and

WHEREAS, the growing number of massage establishments and associated massage practitioners in the city has increased staff workload for licensing, inspection, and enforcement for massage related issues; and

WHEREAS, the City recognizes that while many massage establishments are legitimate businesses, the Costa Mesa Police Department has reported the following ongoing problems at several massage establishments:

1. Ongoing prostitution under the guise of a massage business;
2. Flagrant violation of the Costa Mesa Municipal Code governing massage establishments;
3. Citizen complaints regarding the concentration of massage establishments in specific areas;
4. Citizen complaints regarding the proximity of massage establishments to residential areas and the associated impact on traffic, parking, noise, and quality of life;
5. The organized sale and utilization of fraudulent transcripts of massage training for purposes of obtaining a license;
6. An organized, for profit, cheating scam to assist applicants in cheating on the massage tests; and
7. Falsified massage establishment and practitioner applications; and

WHEREAS, new State laws instituted under Section 4600 of the California Business and Professions Code (SB 731) governing massage establishments will become effective in September of 2009. While the full impact of the new regulations is not entirely clear, there will be significant changes in how massage practitioners and establishments will be licensed, zoned and permitted. The City of Costa Mesa

Municipal Code needs to be reviewed and revised to reflect the new state law covering massage enterprises and practitioners; and

WHEREAS, the Costa Mesa Police Department has requested a moratorium to reevaluate the Costa Mesa Municipal Code in regards to the revising and strengthening the code to curtail illegitimate and criminal operations within the City and to consider an appropriate fee structure to offset the cost of processing the massage permits, licensing, and inspection. Additionally, complaints from citizens suggest that the City's zoning regulations of massage establishments adjacent to residential neighborhoods needs to be evaluated in regards to the potential for negative impacts on the residents' quality of life; and

WHEREAS, the City's current Zoning Code does not require a discretionary review for massage establishments and practitioners that would include evaluation of impacts to surrounding properties and ensure that such activities are occurring in appropriate locations; and

WHEREAS, City staff has indicated that time is needed to conduct comprehensive studies and public hearings relating to the issue of massage establishments and practitioners, in order to adequately determine information such as the following: (1) whether such activity should be subject to discretionary review processes, (2) whether development standards, which do not now exist, should be implemented for such activity, (3) whether processing fees should be adjusted to correlate with the amount of staff time required to process a request, and (4) whether massage establishments should be subject to a specified distance requirement from another massage establishment or other zoning requirements; and

WHEREAS, the Costa Mesa City Council finds, determines, and declares that the current and immediate threat to the public health safety and welfare of the city and its citizens necessitates the immediate enactment of the ordinance. The facts constituting such urgency are set forth above.

WHEREAS, the City Council finds that a moratorium temporarily prohibiting, the issuance of and/or approval by City staff of any approval, license, permit or other applicable entitlement which would allow for new massage businesses or expansion or intensification of massage businesses, or the granting of permits for new massage practitioners, except for those who are necessary to replace leaving employees or contractors of existing businesses, would best serve the public health, safety, and welfare, while the City conducts necessary research into the possible means and methods of addressing the serious problems identified in these findings and to address the new legal requirements set out in SB 731 while ensuring that the interests of existing businesses and residents are balanced against the needs of new businesses seeking to enter the massage establishment or practitioner business and the health, safety, peace and welfare of both residents and visitors to the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA  
HEREBY ORDAINS AS FOLLOWS:

SECTION 1:

1. In order to protect against this current and immediate threat to the public health, safety, and welfare and pursuant to the provisions of California Government Code Section 65858, a forty-five (45) day moratorium is ordered as to the following:
  - a. No new massage establishment whether as a primary use or an ancillary use shall be established, constructed, or permitted in the City of Costa Mesa.
  - b. No existing massage establishment in the City of Costa Mesa shall be expanded, whether by means of addition of space, construction of a new facility or by reconfiguration.
2. No new massage practitioner permit shall be issued in the City of Costa Mesa except that the City may issue a massage practitioner permit to a qualified employee or independent contractor who will be employed at any currently permitted massage establishment to replace a permitted massage practitioner who has left the employ of the permitted establishment.
3. This moratorium shall be effective immediately upon adoption, but may be extended after notice, pursuant to California Government Code Section 65090, and a public hearing, for an additional period of no more than ten (10) months and fifteen (15) days, and subsequently extend the interim ordinance for one (1) year, if findings are made that there remains a current and immediate threat to public health, safety, or welfare, pursuant to California Government Code Section 65858(c).
4. This urgency is based on the following facts:
  - a. The enactment of SB 731, scheduled to take effect on September 1, 2009 has made substantial changes to California law on the subject of permitting massage establishments and practitioners and staff needs time to assess these changes and make code revisions to account for them;
  - b. While some massage establishments are legitimate, many have been shown to be fronts for prostitution;
  - c. There are significant pockets of concentration of massage establishments in Costa Mesa, and staff needs time to assess whether distance requirements or other zoning restrictions are necessary and appropriate to protect residential uses from negative impacts caused by such concentration, such as traffic, noise, parking problems, and illegal behavior;
  - d. There exists schemes for the organized sale and utilization of fraudulent transcripts of massage training for purposes of obtaining a license;
  - e. There are organized, for profit, cheating scams to assist applicants in cheating on the massage tests required to obtain a license; and

- f. The police department has identified a number of falsified massage establishment and practitioner applications
5. Definitions: For the purposes of this ordinance the following terms shall be defined as follows:
- a. "Massage" means any method of treating the external parts of the human body for remedial, health, hygienic, relaxation or any other reason or purpose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing or any other manner of touching external parts of the human body with the hands, or with the aid of any mechanical or electrical apparatus or appliance, with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, ointment or other similar preparations commonly used in this type of business or trade.
  - b. "Massage establishment" shall be defined as that term is defined in Section 9-324(l) of the Costa Mesa Municipal Code.
  - c. "Massage practitioner" shall be defined as that term is defined in Section 9-324(m) of the Costa Mesa Municipal Code.
  - d. "Primary use" shall mean a use that is not an ancillary use.
  - e. "Ancillary use" shall be defined as massage performed in any business that has or provides other types of services as a primary function.

**SECTION 2: ENVIRONMENTAL DETERMINATION.** The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt.

**SECTION 3: INCONSISTENCIES.** Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

**SECTION 4: SEVERABILITY.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 5: APPLICABILITY.** The provisions of this ordinance shall be applicable to the licensing of new massage establishments or massage practitioners. The provisions of this ordinance shall not be applied to any licenses or permits issued to massage establishments or practitioners approved prior to the effective date of this ordinance.



SECTION 6: PUBLICATION. The City Clerk shall certify to the passage and adoption of this ordinance, by at least a four-fifths vote of the City Council, and shall cause the ordinance to be published in the manner required by law. This ordinance shall become effective immediately from and after its passage.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
ALLAN R. MANSOOR  
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

\_\_\_\_\_  
City Attorney

STATE OF CALIFORNIA )  
COUNTY OF ORANGE )ss  
CITY OF COSTA MESA )

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 09-\_\_ was introduced and considered section by section and thereafter passed and adopted as a whole as an urgency ordinance at said regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2009, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_

City Clerk and ex-officio Clerk of the  
City Council of the City of Costa Mesa